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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPTICAL COMMUNICATIONS
GROUP, INC.,

Plaintiff,

-against-

M/V AMBASSADOR, its engines, boilers,
furniture, tackle, apparel, etc., *in rem* and
MARBULK CANADA INC., *in personam*,

Defendants.

11 Civ. 4439 (NRB)

**AFFIDAVIT OF RICHARD V.
SINGLETON**

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Richard V. Singleton, being duly sworn deposes and says:

1. I am a partner with Blank Rome LLP, counsel for the Defendants. I have principal responsibility for handling this matter.
2. I make this affidavit to present documents and deposition testimony in support of Defendants' motion for Summary Judgment
3. Exhibit A is a true and correct copy of Plaintiff's revised application dated October 3, 2006 to the Army Corps of Engineers for a permit to construct the cable at issue in

this case. This document was produced by Plaintiff's consultant, Cameron Engineering & Associates, LLP pursuant to a subpoena served by Defendants.

4. Exhibit B is a true and correct copy of a portion of United States chart no. 12402 showing the charted cable crossing at issue and the area where the relevant events occurred.

5. Exhibit C is a true and correct copy of the Army Corps of Engineers and New York State Department of Environmental Conservation approval of Plaintiff's permit application. This document was produced by Plaintiff.

6. Exhibit D is a complete transcript of the deposition of Mark Sherry taken on October 11, 2011 pursuant to subpoena. Mr. Sherry supervised laying the cable at issue in this case and was on board the cable laying vessel, the M/V Cable Queen, at all times when the cable was being laid.

7. Exhibit E is a document marked as Exhibit 5 on the deposition of Mark Sherry, which shows the track of the M/V Cable Queen and where the cable was laid. The cable's as laid position is indicated in red. I have highlighted in yellow and annotated page 1 of the exhibit to make more understandable. Page 2 is Exhibit 5 exactly as marked on the Sherry deposition.

8. Exhibit F are true and correct copies of documents produced by the National Oceanic and Atmospheric Agency ("NOAA") in response to a Freedom of Information Act request served by Defendants. NOAA's cover letter states NOAA first received any documentation from Plaintiff regarding the cable at issue in December 2011, notwithstanding Mr. Ickes' cover letter is dated January 25, 2008. I have highlighted in yellow the relevant portions.

9. Exhibit G is Plaintiff's Answers to Interrogatories dated December 23, 2011, wherein Mr. Ickes, the principal of Plaintiff, represents that the documents referenced in

paragraph 8 were sent to NOAA in January 2008. Plaintiff's counsel made the same representation to the Judge in open court.

10. Exhibit H is a copy of a side scan sonar survey performed by Plaintiff's contractors (represented by the grey areas), which Defendants' expert, Ocean Surveys, Inc. ("OSI"), overlaid on a navigation chart. Plaintiff's survey contains an anomaly in the seabottom which appears to be an anchor drag line identified by OSI on the Exhibit as a red line labeled "Drag Mark". This drag mark begins outside and to the south of the charted cable field.

11. Exhibit I is a demonstrative exhibit, prepared to scale, to illustrate the various relevant positions recorded in the Exhibits to this affidavit. It contains the SVDR anchor drop position (marked as position "1"), the complete anchor drag mark taken from Plaintiff's side scan sonar survey information (indicated by a red line), and the location of the cable as laid taken from Exhibit 5 to the Sherry deposition (indicated by a hashed blue line). As can be seen, the SVDR position corresponds almost exactly to the beginning of the anchor drag position, both of which are outside the cable field. And the anchor drag mark closely tracks the M/V AMBASSADOR's course and positions as recorded on the SVDR data. This composite was prepared and the positions plotted by a Blank Rome partner, Alan Weigel, who was a former Commander in the United States Navy.

12. Exhibit J is a drawing prepared by Plaintiff's contractors showing the location of a cable that was installed as a temporary replacement for the damaged cable. According to the legend provided by Plaintiff, the dotted line represents the replacement cable and the solid red line with diamonds represents the position of the original cable after the damage. This document was provided by Plaintiff.

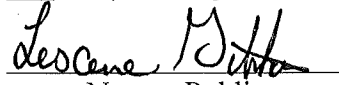
13. Plaintiff admitted in open court during a conference that the temporary replacement cable referred to in paragraph 12 has since been damaged and is no longer in service.

WHEREFORE, the deponent respectfully requests that Defendants' Motion for Summary be granted.



Richard V. Singleton

Sworn to before me this
9th day of August, 2012


Notary Public

LESCENE GIBBONS
Notary Public, State of New York
No. 01GI6044509
Qualified in New York County
Commission Expires ~~July 10, 20~~
Aug. 25, 2014